

DA 02-805
April 15, 2002

Via certified mail, return receipt requested

Mr. Dennis C. Brown
DeltaCom, Inc.
1321 W. Eight Mile Rd.
Detroit, MI 48203

Mr. Michael L. Higgs
Brown and Schwaninger
1835 K Street, N.W., Suite 650
Washington, DC 20006

Re: Final Bid Withdrawal Payment For Auction No. 18

Dear Messrs. Brown and Higgs:

DeltaCom, Inc. ("DeltaCom"), a participant in Auction No. 18, withdrew a high bid on license BEA 058D, Northern Michigan, Michigan in that auction.¹ Auction No. 24, the subsequent auction for the license on which DeltaCom withdrew a high bid in Auction No. 18, has closed.² Therefore, in accordance with the Commission's rules, we are now able to calculate DeltaCom's final bid withdrawal obligations.

Under the Commission's rules, a bidder that withdraws a high bid during the course of an auction is subject to a bid withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the subsequent winning bid.³ If a high bid is withdrawn on a license that remains unsold at the close of the auction, the withdrawing bidder will be required to make an interim payment equal to three percent (3%) of the net amount of the withdrawn bid.⁴ This payment amount is deducted from any up-front payments or down payments deposited for this bidder's account with the Commission.⁵ If, in a subsequent auction, that license receives a

¹ Phase II 220 MHz Service Auction Closes: Winning Bidders In the Auction of 908 Phase II 220 MHz Service Licenses, Report No. AUC-18-F (Auction No. 18), *Public Notice*, 14 FCC Rcd 605, Attachment A (1998) ("*Auction No. 18 Winning Bidders Public Notice*").

² Phase II 220 MHz Service Auction Closes: Winning Bidders In the Auction of 225 Licenses in the Phase II 220 MHz Service, Report No. AUC-24-E (Auction No. 24), *Public Notice*, 14 FCC Rcd 11218 (1999) ("*Auction No. 24 Winning Bidders Public Notice*").

³ 47 C.F.R. § 1.2104(g)(1) (1998).

⁴ 47 C.F.R. § 1.2104(g)(1); *Auction No. 18 Winning Bidders' Public Notice*, 14 FCC Rcd at 608 and Attachment C (identifies bidders that withdrew bids in Auction No. 18 and states the interim three percent bid withdrawal payment).

⁵ See 47 C.F.R. § 1.2106(e) (1998); *Auction No. 18 Winning Bidders' Public Notice*, 14 FCC Rcd at 608.

winning bid in an amount equal to or greater than the withdrawn bid amount, then no final bid withdrawal payment will be assessed, and upon appropriate request, the Commission will refund the interim three percent (3%) payment.⁶ If in a subsequent auction, the winning bid for that license is less than the bidder's withdrawn bid amount, then the bidder will be required to make a final bid withdrawal payment equal to either the difference between the bidder's net withdrawn bid and the subsequent net winning bid, or the difference between the bidder's gross withdrawn bid and the subsequent gross winning bid, whichever is less.⁷

With respect to DeltaCom's bid withdrawal in Auction No. 18, the Commission has previously deducted an interim bid withdrawal payment of \$49.00 from the funds on deposit with the Commission because license BEA 058D remained unsold at the end of the auction.⁸ As shown in Attachment A, in Auction No. 24, the subsequent auction of license BEA 058D, the winning bid amount of \$325.00 for the license was less than DeltaCom's withdrawn bid amount of \$1,625.00.⁹ In accordance with Section 1.2104 of the Commission's rules,¹⁰ DeltaCom owes a final bid withdrawal payment of \$1,300.00 in connection with license BEA 058D. After applying the interim bid withdrawal payment of \$49.00, DeltaCom owes an outstanding balance of \$1,251.00.¹¹

DeltaCom is in debt to the United States in the amount of \$1,251.00, payable in full, immediately, and without further demand. As permitted under 31 U.S.C. § 3717, the debt is subject to interest, penalties, and administrative costs, and interest accrues from the date of this letter, which is also its mailing date. DeltaCom, the debtor, may avoid payment of the interest if it tenders to the Commission full payment within 30 days of the date of the letter. Moreover, the debt is subject to an additional charge to cover the cost of processing and handling of delinquent debts, and a penalty charge in the amount permitted by law. The penalty charge for delinquent debt payments permitted by 31 U.S.C. § 3717 currently is 6 percent a year for the failure to pay any part of the debt more than 90 days past due.

Ordering Clauses

Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 309 of the Communications Act of 1934 as amended, 47 U.S.C. §§ 154(i), 309, and Section 1.2104 of the Commission's Rules, 47 C.F.R. § 1.2104(g), DeltaCom IS ASSESSED a final withdrawal payment of \$1,300.00 as a result of DeltaCom's withdrawal of its bid on license BEA 058D, as computed in Attachment A.

⁶ 47 C.F.R. § 1.2104(g)(1) (1998).

⁷ *Id.*

⁸ See *Auction No. 18 Winning Bidders' Public Notice*, 14 FCC Rcd at Attachment C, 659. In Attachment C, the Commission set forth the amount of DeltaCom's interim bid withdrawal payment, \$49.00, and explained that the interim bid withdrawal payment was based on three percent (3%) of the net withdrawn bid on license BTA058D (\$1,625 x 3% = \$49.00).

⁹ See Attachment A to this letter (calculates the final bid withdrawal payment).

¹⁰ 47 C.F.R. § 1.2104(g)(1).

¹¹ *Id.* To make the final bid withdrawal payment, DeltaCom must submit payment in accordance with the instructions set forth in Attachment B.

Messrs. Dennis C. Brown and Michael L. Higgs
April 15, 2002

IT IS FURTHER ORDERED, that, pursuant to 47 C.F.R. §§ 1.2104 and 1.2106, DeltaCom's interim bid withdrawal payment of \$49.00 will be applied towards the final withdrawal payment for license BEA 058D, leaving DeltaCom with a debt to the Commission of \$1,251.00.

It is FURTHER ORDERED that DeltaCom's debt of \$1,251.00 be paid immediately, in accordance with the payment instructions in Attachment B within 30 days of the date of this letter, and if it is unpaid 30 days of the date of this letter, interest will accrue from the date of this letter along with penalties and administrative costs permitted by 31 U.S.C. § 3717.

It is FURTHER ORDERED that this letter shall be sent to the applicant and its representatives by certified mail, return receipt requested. This action is taken pursuant to authority delegated by Section 0.331 of the Commission's rules, 47 C.F.R. § 0.331.

Sincerely,

Kelly Quinn, Deputy Chief
Auctions and Industry Analysis Division
Wireless Telecommunications Bureau

cc: John L. Zimmerman
President
DeltaCom, Inc.
1321 W. Eight Mile Rd.
Detroit, MI 48203

ATTACHMENT A

Phase II 220 MHz Service Spectrum License Auction

Multi-Auction Bid Withdrawal Payment Report

License Number	Market Description	AUCTION 18, DeltaCom's Withdrawn Gross Bid Amount	AUCTION 18, DeltaCom's Withdrawn Net Bid Amount	AUCTION 24, Warren C. Havens's Gross Bid Amount	AUCTION 24, Warren C. Havens's Net Winning Bid Amount	Final Bid Withdrawal Payment (Difference between the Auction 18 and Auction 24 Net Bids)	DeltaCom's Interim Withdrawal Payment (3% of withdrawn net bid)	Total Amount Due
BEA058 D	Northern Michigan, MI	\$2,500.00	\$1,625.00	\$500.00	\$325.00	\$1,300.00	\$49.00	\$1,251.00

ATTACHMENT B

The following information is being provided to assist you in making your payment.

PAYMENT INSTRUCTIONS

All payments must be made in U.S. currency in the form of a wire transfer. No personal checks, cashier's checks or other forms of payment will be accepted. Wire transfer payments must be received by Mellon Bank by 6:00 PM Eastern Time, no later than thirty days from the date of the ORDER; however, if the 30th day falls on a non-business day, e.g., Saturday, Sunday or holiday, it is due the next business day. Applicants must allow sufficient time for the wire transfer to be initiated and for the transmission to be completed prior to the deadline. To submit funds by wire, applicants will need the following information to properly effect the transmittal:

ABA Routing Number: 043000261

Receiving Bank: Mellon Pittsburgh

BNF: FCC/Account #911-6106

OBI Field: (Skip one space between each information item)

"AUCTIONPAY"

FCC REGISTRATION NO. (FRN) (same as FCC Form 159, Block 11 and/or 21)

PAYMENT TYPE CODE (enter "APEN") same as FCC Form 159, Block 24A

FCC CODE 1 (same as FCC Form 159, Block 28A: ("18"))

PAYOR NAME (same as FCC Form 159, Block 2)

LOCKBOX No.: 358850

A completed FCC Remittance Advice Form (FCC Form 159, Version 2/00) must accompany payments. On the same business day that the applicant submits payment to Mellon Bank, the applicant must submit a completed FCC Form 159 via facsimile at (412) 209-6045, at least one-hour prior to placing the order for the wire transfer. The specified debt is due and payable to the United States immediately and without demand, and it is subject to interest, penalties, and additional administrative costs. Interest accrues from the date of the ORDER; however, to avoid the payment of charges (i.e., interest, penalties, and administrative costs) and enforced collection, full payment must be made and received within 30 days from the date of the ORDER. Debtor's failure to make complete timely payment will result in assessment of such charges permitted by 31 U.S.C. § 3717.

For questions regarding the submission of payment, and the FCC Form 159, contact Gail Glasser or Tim Dates, Office of the Managing Director, Financial Operations Center, Auctions Accounting Group, at (202) 418-0578 or (202) 418-0496.